

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY MATTHEW CARNICOM,

Defendant-Appellant.

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FOR PUBLICATION

October 31, 2006

9:00 a.m.

No. 259713

St. Joseph Circuit Court

LC No. 04-012272-FH

Official Reported Version

Before: Borrello, P.J., and Jansen and Cooper, JJ.

COOPER, J. (*concurring*).

The majority finds dispositive defendant's failure to offer any evidence that expert testimony would likely benefit him. The majority is correct that *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995), requires such a showing of a nexus between the facts of the case and the need for an expert. However, because I find the reasoning underlying that conclusion so circular as to render meaningless the right to appointment of an expert witness, I write separately to urge the Supreme Court to clarify its opinion in *Jacobsen*.

Essentially, the argument goes, an indigent defendant may prevail upon the court and the taxpayers to provide and fund an expert witness if the defendant can make a showing that the testimony of the expert witness will help his case. Until defendant has engaged an expert witness to conduct whatever tests are at issue, defendant cannot know how the expert's testimony will be shaped. And the value, at least to the court and the trier of fact, of an expert is to reach the truth of a matter by applying scientific, technical, or other specialized knowledge to the facts of the particular case, not to start with a conclusion and back into it with testing that is designed to support that conclusion rather than to reach an objective truth. To require a defendant to find an expert who will say what the defendant wants said without having first performed whatever testing is necessary to form a conclusion is contrary to that basic principle. And it puts the defendant in an untenable position, unless the defendant is able somehow to find an expert who is willing to do the work of preparation on the promise that he will be paid only if and when the court allows him to testify.

If the court provides to indigent defendants the right to a court appointed and funded expert witness, there can be no requirement that the defendant first show the expert will support his claim. Otherwise, the right affords defendants no protection at all.

/s/ Jessica R. Cooper